

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DEMETRIUS BROWN,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 04-379E
)	
U.S. JUSTICE DEPARTMENT,)	JUDGE MCLAUGHLIN
BUREAU OF PRISONS, FCI MCKEAN)	MAGISTRATE JUDGE BAXTER
WARDEN JOHN J. LAMANNA,)	
REGIONAL DIRECTOR D. SCOTT)	Electronically Filed
DODRILL, MEDICAL DIRECTOR,)	
DIRECTOR HARLEY G. LAPPIN,)	
)	
Defendants.)	

**DEFENDANTS' MOTION TO EXTEND TIME FOR FILING
A RESPONSIVE PLEADING AND/OR DISPOSITIVE MOTION**

Pursuant to Rule 6(b)(1) of the Federal Rules of Civil Procedure, defendants the United States Justice Department, the Bureau of Prisons, FCI McKean Warden John J. LaManna, Regional Director D. Scott Dodrill, Medical Director and Director Harley G. Lappin, by their undersigned counsel, hereby file this Motion to Extend Time for Filing a Responsive Pleading and/or Dispositive Motion, and in support thereof state as follows:

1. *Pro se* prisoner Demetrius Brown brought this action under the provisions of the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b), 2671 *et seq.*, alleging personal injuries caused by his exposure to second-hand smoke or Environmental Tobacco Smoke ("ETS") during his incarceration at a federal prison located in McKean County, Pennsylvania ("FCI McKean").

2. As relief, plaintiff's Complaint seeks a declaratory judgment and compensatory damages in the amount of \$10 million. It also seeks an injunction that prohibits, *inter alia*, defendants or their agents "from harassing, threatening, punishing or retaliating in any way

against the Plaintiff because they filed this action or against any other prisoners because they submitted affidavits in this case on behalf of Plaintiff." (*Id.* at Wherefore Cl., ¶ 3(f)).

3. Plaintiff filed a Motion to Amend Complaint Correcting Typographical Error and Adding Cure to Jurisdictional Deficiency, which was granted by Order dated May 9, 2005. After defendants filed a Motion to Dismiss or, in the Alternative, Motion for Summary Judgment on January 3, 2006, plaintiff moved for leave to file a Second Amended Complaint on February 17, 2006. Plaintiff's motion for leave was granted and his Second Amended Complaint was docketed on March 23, 2006. On that same day, this Court dismissed defendants' dispositive motion without prejudice in light of the Second Amended Complaint.

4. After this Court recommended denying plaintiff's motion for preliminary injunction and the District Court adopted this Court's Report and Recommendation, plaintiff filed on March 30, 2006 a Notice of Appeal with the Court of Appeals for the Third Circuit. On December 14, 2006, the Court of Appeals dismissed plaintiff's Notice of Appeal for lack of appellate jurisdiction.

5. Pursuant to this Court's Text Order dated December 14, 2006, defendants' responsive pleading or dispositive motion to plaintiff's Second Amended Complaint is currently due on January 16, 2007.

6. Due to the litigation demands of defense counsel, however, defendants need additional time to fully respond to plaintiff's Second Amended Complaint.

7. Defendants therefore request a brief extension of twenty (20) days, or until February 5, 2007, to file their responsive pleading and/or dispositive motion to plaintiff's Second Amended Complaint.

8. Such a brief extension will not unduly delay this litigation.

9. Plaintiff is a *pro se* inmate and, as a result, has not been contacted regarding his consent or opposition to this motion.

WHEREFORE, defendants respectfully request that the Court grant their request for a twenty (20) day extension, or until February 5, 2007, to file their responsive pleading and/or dispositive motion to plaintiff's Second Amended Complaint.

A proposed order is attached.

Respectfully submitted,

MARY BETH BUCHANAN
United States Attorney

s/ Megan E. Farrell
MEGAN E. FARRELL
Assistant U.S. Attorney
Western District of PA
700 Grant St., Suite 4000
Pittsburgh, PA 15219
(412) 894-7429
PA ID # 76972

Counsel for Defendants

Dated: January 16, 2007

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of January, 2007, a true and correct copy of the within Defendants' Motion to Extend Time for Filing a Responsive Pleading and/or Dispositive Motion was served via first-class mail upon the following:

Demetrius Brown
#21534-039
FCI Raybrook
P.O. Box 9001
Raybrook, NY 12977

s/ Megan E. Farrell
MEGAN E. FARRELL
Assistant U.S. Attorney